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* PROFESSIONAL ETHICS.

Lecture III—The Advocate and the Court.—(*Contd*).

A case is reported in 29, *American Law Review*, p. 444, where an advocate was guilty of the very serious misconduct of threatening a judge with the imputation of corruption. It was, of course, held that that was contempt of court, and the advocate was suspended. You know that in America judges are elected in some states, and they are not always persons either of very great ability or of the highest character, and the temptation is probably sometimes strong on the part of advocates to treat some judges with a certain amount of contempt. This case, however, was really a very gross one. Language was used in a brief filed by an attorney in a pending case charging a judge of the court with fraud in respect of a transaction in which he had acted as counsel before becoming a member of the court. The statement made was this: "that unless the court decided the case in favour of his client the judge would incur public imputation of corruption." The court based its judgment against the advocate on two grounds. *Firstly*, that he made gross and scandalous charges of fraud against an attorney-at-law who subsequently became a justice of the court, and he made these charges because he was a justice of the court, and *secondly*, that he sought to intimidate the court by stating in advance of its judgment that, unless it rendered its decision in favour of his client, finding that one of its members had, while at the bar, perpetrated a gross fraud, the court would justly incur public suspicion of acting from corrupt motives. The Court said :—

* The third of a series of addresses delivered by the Hon'ble Mr. Justice Sundara Aiyar, one of His Majesty's Judges of the High Court of Judicature at Madras, to the apprentices of the year 1910-1911, at the request of the High Court.

"We apprehend that the members of a chivalric and honorable profession could not doubt for one moment that the court was right, and entirely right"—in punishing the advocate. "Certainly it is a painful spectacle to see a court of justice arraigning a member of its bar for contempt, when the contempt consists in charging the court, in advance of its decision, with corruption. In such a case the proceeding is instituted to vindicate the honour of the court and of its judges, as well as to satisfy the necessities of public justice; and the judges are therefore, in a very deep sense, sitting as judges in their own case. All this doubtless impressed the members of the court to a painful degree; and, beyond all question, nothing could have gratified the court more than a simple retraction on the part of Mr. Philbrook, of the grossly intemperate language which he had used, and a mere apology to the judges whom he had so grossly and cruelly assailed. But it was a case where the law furnished no other adequate remedy. And in every case of what is called contempt *in facie curiæ*, the judge is under a painful necessity of sitting, in the same sense, as a judge in his own case. Cruel as it is for a judge to be compelled to act under this necessity, it must be borne for the sake of public justice. All will agree that nothing is more calculated to corrupt the stream of public justice than a deliberate attempt to intimidate the judges, by charging them with corruption, or by intimating that they will be deemed guilty of corruption if they do not decide a certain case in a certain way. Nor can there be any room for debate upon the question that a lawyer, who will take such a course, not in the heat of oral debate—not under the influence of sudden exasperation—but deliberately in a long printed argument which is expected to remain among the files of the court throughout all time, is utterly unfit to be a member of the great and honorable profession of the law." Now it would make no difference if want of impartiality or corruption was imputed to the judges after the case was over. There was a case here recently of a newspaper in the mofussil imputing want of impartiality to two learned judges of this court, and proceedings were taken to vindicate the honor and dignity of this court by summoning them for contempt of court. The court laid down the rule that it had jurisdiction to deal with the persons, though the paper itself was published not in the town of Madras but in a mofussil station, and it pronounced the publication

a gross contempt of court. No further proceedings were, however, taken.[1] Judges are always unwilling to act in a matter in which they have to be judges in their own cause, but it would, at the same time, be highly regrettable that the dignity of the court and the cause of judicial administration should not be vindicated, when a really serious attempt is made to impute any improper motive to the tribunal. Sometimes we find in our experience advocates not understanding the gravity of the matter, and telling the court that unless they uphold their contention they would be doing an injustice—this really would be contempt. It would be going too far on the part of an advocate to say that a decision contrary to that required by him would be unjust. It is for the judge to decide what the justice of the cause is, and no advocate has a right to say that only one decision could be just when he is arguing a case. Of course the limit to which the advocate might proceed in asseverating the justice of his own cause is often very thin. It may be right enough to say that the justice of the case requires a certain thing to be done, but you should not say that if the court pronounced judgment in a certain other way, that would be unjust, because when it does pronounce it, it must be because it is just.

It would appear that in America a great deal of pains has sometimes to be taken to enforce discipline on the part of the bar, for we find in 34, *American Law Review*, p. 237. A passage which we, here would consider as very curious, namely, an exhortation to the bar that its members should rise when the judge comes to the court. It seems there are courts there where advocates pose in all sorts of ways when the judge comes, sitting in all kinds of postures, doing anything they please and, (I believe the writer says), some of them even picking their teeth. However, there is no necessity for such advice in this country. It is well, however, to remember that these are not mere rules of courtesy which it is proper that you should observe ; a breach of these observances would be actual contempt of court and punishable as such. Threats and contemptuous expressions to the Bench have always been held to be contempt. In the High Courts they could be at once dealt with by the judges, but in the mofussil courts there is no jurisdiction on the part of the inferior

1. Cr. M. P. 15 of 1904.

tribunals to deal with contempt *ex facie* as a distinct offence ; to be punishable it must be of a nature that could be brought under the sections of the Penal Code. It has recently been decided by the Madras High Court that for contempt shown to an inferior court the Chartered High Courts have got the power to punish the guilty person.[1] In England also it has been held that the High court of Judicature has the power to punish a person guilty of contempt to an inferior court. The question is not of much importance so far as advocates are concerned, because probably their misbehaviour would be regarded as professional misconduct and you know that judges in the inferior courts have power to take cognisance of professional misconduct on the part of a pleader.

Without failing in respect to the Bench, it is the duty of the members of the bar to assert their just rights to be heard by the tribunal before which they are practising. They should be fearless and independent in the discharge of their duties; they would be perfectly right in protesting against irregular procedure on the part of any judge ; and if the advocate is improperly checked or found fault with—that is, not if any observations are made on the merits of the case, but if the advocate himself is improperly dealt with—he should vindicate the independence of the bar. He would be perfectly justified in insisting on getting a proper hearing, and he would have the right to object to any interruption with the course of his argument such as to disturb him in doing his duty to his client. But every advocate should remember that, after all, his object is to convince the court, and it would be quite right and expedient on his part, as indeed it is his duty, to listen to any expression of opinion by the bench and to answer any questions that the bench might put in order that he might be able to make the judges understand his exact position. It is very difficult indeed for a judge to maintain the exact equilibrium with respect to interruption of arguments. The complaint has of late been very frequent in England that judges often interrupt too much, that argument has practically become a course of interrogation by the judge or the advocate. At the same time I believe that advocates

1. (1911) 21 M.L.J. 532.

generally would agree that nothing would be more unfortunate than that the judge should preserve complete silence, for it would then not be possible for a pleader to know whether his argument has been fully grasped, or whether there are any difficulties that the judge feels in accepting it. It would be an advantage to him if such difficulties are put to him by the court so that he may have an opportunity of convincing the judge that the difficulties are really not insurmountable. What therefore a judge has really to do is to maintain a receptive attitude and at the same time to make such observations as would be desirable to enable the advocate to understand the difficulty which the judge feels. It is indeed an extremely difficult task to maintain the exact position that the judge should. A pleader should be indulgent if he thinks that the interruption is a little more than what would be proper to enable him to go on with his argument. At the same time he must inform the judge that he feels disconcerted by the extent of interruption, if that is really the case. It may sometimes happen that a judge taking too strong a view makes it difficult for an advocate to proceed with his argument; then the advocate would be perfectly right in objecting to such interruption.

There is another matter I would mention particularly. You should insist upon a proper record being maintained of the proceedings, at least in all appealable causes. If, for instance, you raise a particular objection or argue a particular point, you are entitled to see that there is a record of the point you raise or of the objection you take. You are entitled to ask the judge to make a note of it, and if it so happens that the judge refuses your request, the proper course will be to make a careful note yourself, so that it may be available for use in the court of appeal. The advocate should assert his right to address a jury properly without needless and unnecessary or improper interruption by the court, because the jury are the judges of fact and the advocate is entitled to influence them by such argument as he is able to urge. Of course the judge would be perfectly right to stop any improper argument, any excessive appeal to the feelings of the jury, or any attempt to put forward what is not in evidence or any misstatement of the law or any misrepresentation of fact. But while that is so, it is equally the right of the advocate to have

his chance, and the best possible chance, with the jury on behalf of his client, and if the judge expresses too strong an opinion to the jury in commenting on the facts, the advocate would be entitled to object to it.

Another matter in which probably those of you who practise in the mofussil may feel inconvenienced is interference on the part of the judge during the examination of witnesses. Great care is required in such cases. You may find some judges impatient, and disposed to think that time is being wasted by needless questions. It is not always possible for an advocate to enable the judge to feel that every question put is relevant. Irrelevant questions are often introductory to relevant questions, but sometimes some judges object to everything they cannot see the relevancy of, and much patience is then required on the part of the advocate. If possible he should manage to let the judge see his hand, enable him to see what he is driving at, without disclosing his hand to the witness himself. Of course the art of the advocate consists in putting questions in such a manner that the witness who is bound to answer them does not know the object which the questioner has in view and to lead him on until he has proceeded too far to speak a falsehood so as to favour the party on whose behalf he is called, but the pleader should have dexterity enough to enable the judge if possible to see his object. It may be that sometimes he would be bound to ask the indulgence of the court and say 'you will see, sir, in a short time, that the question is relevant," but if an advocate is to have credit for not putting unnecessary questions, it can only be by showing by his own conduct that he does not do so. An advocate who has won the confidence of the judge will very seldom feel embarrassment by interruption on the part of the judge when he is questioning a witness. If, on the other hand, a judge has come to the conclusion repeatedly that time has been wasted by a particular advocate, then indeed the latter might find it very difficult to do his duty properly. Tact, patience, straightforward conduct in wasting the time of the court, are all necessary in enabling the advocate to get on properly with the court, but while patience is required and should be practised, the advocate would not be doing his duty if he did not protest against improper interference on the part of the presiding judge with his conduct

of the case. The advocate is entitled to much indulgence, especially in the conduct of an original suit, because he knows his case while the judge does not, and the judge cannot often expect to know the case or the relevancy of every question until he has waited for a considerable time.

Now in the course of argument there is a strong tendency on the part of a pleader to interrupt his opponent. What is the proper course to be pursued in this matter? You will find in the Rules of Practice that interruption is proper when there is any incorrect statement of facts. If a preliminary objection has to be taken, interruption is proper. If irrelevant evidence is referred to, it is proper to ask the court not to listen to that evidence, and it may be proper to call the judge's attention to the fact that some questions in a case would not have to be decided in the end and that, therefore, the pleader on the other side should not be listened to on particular points. But, as a fair-minded person, an advocate has to remember when the temptation to interrupt comes to him—I assure you it would often be a great temptation—that just as he desires to impress the court by putting forward his own view, it is the right of the other side to be able to influence the court by putting forward *his* particular aspect, and that it is not right on his part to interfere with the opportunity that the other side has, to produce such impression as it can by legitimate advocacy. You may perhaps find that the judge is being influenced by a particular course of argument and you may feel that your client's case is slipping from under your feet. Remember it is a duty that you owe to your opponent, so long as the argument itself is fair, to allow the opponent to produce whatever impression he can, and true advocacy consists in being able to remove that impression if possible when your own turn comes. You should act on the principle "Do unto others as you would be done by." There is no doubt that no advocate would like to be deprived of the chance he has of persuading the judge and taking every legitimate advantage that he can to bring round the judge to *his* view of the rights of the dispute. This should always be borne in mind and there should be no improper interruption. Some judges may welcome interruption in order that their own work may be shortened, but it will be the duty of an advocate to discourage

such a disposition on the part of a judge, for, unless he does that, the result would be 'constant wrangling between the advocates and confusion in the court. I would say that if really you decide to interrupt, it is much better that you should do so in a formal, dignified manner, than to make it actually impossible for the other side to go on by muttered interruptions. You have no right to prevent the judge from following the course of the argument on the opposite side. If you think that the argument is not proper, or that there is matter which you are entitled to introduce at a particular stage of the argument, the proper course is formally to stand up and say that you wish to interrupt and then state what you have to say. I may tell you that improperly interrupting and abusing the opposite side or treating the pleader on the opposite side with contempt or insulting him, are all contempts of court. A part of the duty due to the court is that its officers shall be properly respected, and as the pleader on the opposite side is an officer of the court you are bound not to treat him with disrespect. The same remark will apply to other officers of the court; to those who are in attendance as ministerial officers courtesy is due, and any improper or offensive conduct towards them would be contempt of court. So also any insult offered to the jury who are deciding a case would be contempt of court. Imputing corruption to the jury, it has been held, would amount to contempt of court. Now to enable you to show proper respect to the court I may give one important advice. Do not comment on a case, in which you are engaged, outside the court. Sometimes one may feel strongly with respect to a case in which he is engaged. To avoid the temptation of stating what is improper, the best rule to act upon is not to comment on the case outside the court room. When you have done with the arguments in court, let there be no more about it. I need hardly warn you that it is not only improper but a contempt of court on the part of an advocate to comment upon a pending case in any newspaper. It would be most improper to influence the judgment of the court and the administration of justice by writing to any newspaper upon a pending case. You should not show irascibility about the way in which judges are dealing with a case while it is still going on by making any comments outside the court. I would go even further and say that for some time after a case has been decided

it will be a golden rule not to trouble yourself to speak about it outside. Of course every advocate has a right to criticise judgments that have been passed, but in the interests of his own peace of mind and in order that he may not be tempted to act improperly, the best course would be to have nothing to do with the case for six weeks after it has been decided. I find that the Bar Council of England was called upon to answer a question by a barrister that he was asked by a client, 'who was the *persona grata* of a particular judge?' The client wanted to engage a pleader who was likely to be viewed with most favour, as he thought, by a particular judge. The barrister wanted to know whether it would be proper to answer it and the Bar Council decided that it would be improper. You can easily see that the answer was perfectly sound. You have no right to produce any impression that a judge is not absolutely impartial by suggesting that justice would be more easily had if one particular counsel appeared instead of others. I need hardly tell you that the temptation should never be yielded to of stating to clients that a particular judge is well known to you or that a particular judge thinks well of you in order that the client may be induced to give you his case. This is a kind of temptation that is sometimes yielded to even by honourable advocates. But there can be no doubt about the impropriety of any such statements. It is your duty to uphold the dignity of the court; and your duty goes further to maintain with the outside public the absolute impartiality of every judge. You remember I read a sentence conceived in excellent spirit: "Exalt and loyally magnify the prestige and power of the court that thus the administration of the law may be made efficient for the attainment of justice."[1]

Thus far we have been dealing with the conduct of the advocate towards the incumbent of the judicial office. Perhaps it is hardly necessary to say that in the conduct of a case there should be nothing dubious; that there should be no cunning pleadings, no scandalous statements in affidavits or in any pleadings that you file; and there should be no imputation on judges of lower courts when you have to draft grounds of appeal. While you deal with the judgment of the lower court on the grounds on which it is based, there ought to be nothing which is disrespectful to the judge in the court below. In an old case decided

1. (1911) 21 M.L.J. 364.

in 1603, *Egerton*, Lord Chancellor, punished insufficient demurer by ordering that neither bill, answer nor demurer should be received from a barrister of the name of Hill. The punishment, no doubt, was a very severe one, that no more pleadings were to be received from him at all.[1] The Court of Exchequer did the same in another case—*Hickman* v. *Clarke*.[2] The Courts of Common Law and Chancery have respectively punished baristers for prolix, frivolous, scandalous, vexatious and tricky pleadings. It is not usual in these days to inflict so severe a punishment on pleaders who are guilty of this kind of conduct, and in the case of any judge who can command his own court it would be unnecessary. The best course would be to return the pleadings, to admonish the pleader and point out to him the impropriety of his conduct. That would usually be quite enough, but I think judges have sometimes been lax in checking improper and loose pleadings. It would be a proper thing on the part of the judges in inferior courts not to allow such pleadings to go unnoticed but to return them. In many a case if a pleader behaves improperly there is a very ready remedy open to the judge instead of making too much of it and proceeding against him to extremes. The best course is to refuse to hear him until he withdraws any improper statements that he might make. There would be practically no appeal against such act on the part of the judge. Sometimes judges have gone so far as to refuse to hear a particular pleader at all in any case until he makes reparation for misconduct in one case. It would be mostly quite enough to refuse to hear him in the particular case.

It is hardly necessary perhaps to say, after a recent case that you may be aware of [3], that it would not be right, professionally, to include in pleadings facts which the pleader knows personally to be false. I mean personal knowledge in the sense in which you understand it in the law of evidence. If a person has seen a thing take place and the pleadings state that it did not occur, or if he heard a thing and the pleading states it was not said, then the

1. *Hill's Case* (1603) Cary, 27. 2. (1615) 2 Fowler Ex. P. 408.
3. *In re a High Court Vakil.* (1908) 6 M.L.T. 329.

advocate cannot take shelter under the circumstance that the statement is made on behalf of his client. It will not do for him to say that it is the client that states that a particular thing did not occur or a particular statement was not made. The case referred to here was of a notice sent by a pleader in which he stated what was false to his knowledge. There is a case in the English Reports where the putting in of an affidavit false to the knowledge of the advocate was regarded as contempt of court and professional misconduct—*Linwood* v. *Andrews and Moore*[1]. It would be dwarfing one's own soul indeed on the part of any advocate to claim that he should be entitled to put forward what is false to his own knowledge. But I would strictly confine this rule to what is false to his knowledge, and not to xtend it to inferences that he may draw from facts that he knows, or to his opinion upon the facts as placed before him, because, as I have already told you, the right inference and the right decision to be come to are for the court. An advocate can never be sure that he knows all the facts upon which the right inference to be drawn on the whole case should be based. He can never be confident that his experience is the correct experience and in any case it would be making the administration of justice difficult if an advocate should take upon himself to decide the rights in a cause which is brought before him. It is not, therefore, meant that an advocate in his pleading should not put forward what he is not convinced of or what he does not for himself believe to be true; the prohibition is confined to what he knows to be false.

Now we find it stated that a solicitor must be never guilty of sharp or dishonest practice. " He must never snap a judgment; he must not allow his client to swear by the card; he must never attempt to mislead the court himself nor permit his client to do so." [2]

These are vague expressions; I shall therefore try to state more definitely to you what it is that he should avoid: there should be no false suggestions; there should be no misrepresentation, no statement made to induce the court to believe that there are no facts beyond what the advocate himself has stated; no suppression of what it is his duty to put before the court; no

1. (1888) 58 L. T. 612.

2. Encyclopædia of the Laws of England, Vol. II 501.

instigation of the client to state what is untrue; no sanction on his part of any suppression of evidence, or withholding of documentary evidence. The prohibition does not extend to arguments of the validity of which he is not himself convinced, whether they bear on the facts or on the law of a case. With respect to the law there may be some differences of opinion. I cited to you a passage in the *Canadian Law Times* in which the statements of English judges were quoted that if an advocate is convinced that he has no case, he ought to admit it. [1] I have already dwelt on the limits of that statement. In America an attorney may be suspended or disbarred, it is stated, for perverting or attempting to pervert the decision of a cause upon the merits by misleading the court by tampering with witnesses or by false testimony before the court.

In this country you know that every advocate, whether he is an and advocate, attorney or vakil, has to take the oath of allegiance, and of fidelity to the King's government in the country. In England apparently this requisite has been abolished. The result in this country would apparently be that an alien could hardly be a practitioner in the courts, for how can an alien swear allegiance to the king of this country? In England, any alien may be a practitioner because there is no such declaration of allegiance required. Of course the Native States in this country being subordinate to the paramount British power, there is no difficulty in the subject of a native sovereign taking the oath of allegiance. Perhaps an interesting question would arise if a subject of the French Government in Pondicherry wanted to be enrolled as a practitioner in this court.

You are probably aware that in some cases a pleader may be made to bear the costs of proceedings in court personally. If the court is moved on behalf of a minor without a next friend, the pleader must pay the costs. In England where an advocate is guilty of unauthorised or negligent acts in the discharge of his duty, he may be made to bear the costs. There is no provision in the statutes of this country to that effect. You know the provision in the Code of Civil Procedure about next friend—Order XXXI, rule 2. It is difficult to say how far the inherent power of the courts would go. You should not assume there may not be cases where the court would have the power to make a pleader bear the costs of a particular proceeding.

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1. (1911) 20 M.L.J. 362.

There are some matters of minor importance which you should bear in mind. Of course the court is a place where grave and serious business is done and nothing not in accordance with the dignity of the proceedings, though not improper in itself, should be indulged in. The reading of newspapers in court is regarded as improper in England; so I take it, would be the reading of novels—of what others would know to be novels. I think I may say that obtrusive private conversation should be avoided in court. If has been held in England that not wearing proper dress is contempt of court—whether it would be contempt or not, there can be no doubt that it would not be proper to wear what is not regarded as proper dress. Perhaps we may take it as a rule for our guidance that the regulation dress should be worn, and I think—you may take it merely as my opinion—that a practitioner must be robed even when he has no business of his own if he wishes to sit at the bar. You know that it is not proper to express approbation or disapprobation of any act of a judge—all that is contempt of court, approbation as much as disapprobation. Perhaps I may add that loud laughter should be avoided, and certainly so, in such a manner as to disturb the argument of the opponent. Do not be tempted to impress the judge by laughing at the arguments of the opposite side. That is certainly not proper; it might well be held to be contempt but the question is not whether it might amount to that or not; I have no doubt that it should not be indulged in. Of course all this does not mean that humour should be banished from the court-house; excellent witticisms abound in courts, especially in the English courts.

In England the court has the power to assign counsel to a party in some cases, chiefly in pauper causes. It is stated that when a person has been admitted to sue or defend as a pauper, the court can assign counsel or solicitor or both, and counsel and solicitor, when so assigned, cannot refuse their assistance unless they satisfy the court that they have good reasons. They cannot receive any fee for their services without being guilty of contempt of court. I have already told you that in cases of treason and felony the court has the power to assign counsel to argue questions of law. There are other cases in England under the Poor Prisoners' Defence Act and the Criminal Appeal Act which make provision for the assignment of counsel and solicitor to poor prisoners. In America it has been held that an attorney cannot refuse to act without compensation for persons accused of crime and destitute of means upon appointment thereto by the court, and by statute the court has a right to command the

services of counsel for persons unable to pay in civil as well as in criminal cases. In this country there is no provision of law enabling a court to assign counsel. It is the practice on the part of the courts to appoint counsel for persons who have been sentenced to death when the case comes up to the High Court, and in the lower courts when a person is charged with culpable homicide amounting to murder; but it is also the practice to give some remuneration to those who are assigned. I would impress upon you that no suggestion from the court to help poor litigants should be declined. It is considered breach of professional etiquette here for any person who may be offered a brief in a referred trial to decline to take it. I think it is also considered unprofessional to decline a retainer by the Pleadership Examination Board on a matter relating to professional conduct. Sometimes, the court appoints an *amicus curiae* if there is some question of law to be considered and one side alone is represented by a pleader or of there are circumstances in which the court thinks it proper that some one else should also help the court.

The court has got power to deal summarily in certain matters with pleaders as officers of the court, and to grant reliefs against them summarily. For instance the court has power to award any sum of money which may have been received by a pleader and which the court thinks he ought not to keep. In America an attorney may, without resort being had to an action, be summarily proceeded against for wrongs done by him in his professional capacity. Here, though conferred also by statute, the same power exists in the court by virtue of its control over its officers independent of any statute. The summary jurisdiction extends to any matter in which an attorney has been employed in his professional character. An order for the payment of money will not be granted, however, unless the claim of the petitioner is free from doubt. To give the court the right of proceeding summarily against an attorney, it is essential that the relation of attorney and client should exist between the parties in relation to the matter which is the ground of the application. If the court has to deal with the question whether a pleader should return any money which he has received, he could not plead the law of limitation, because his duty to act properly as an officer of the court cannot be subject to any limitation. So it has to be remembered that clients have a

procedure which will exempt them from the statute of limitations in matters in which the court can deal directly with its officers.

In such a case absence of privity of contract cannot be pleaded. Suppose for instance a pleader enters into an engagement with a person, being paid his fees by him, that he would conduct the case of a litigant. He may be made to account for the money at the instance of that third person. The question in every case would be whether the court is able to come to the conclusion that its officer has violated a clear duty on his part, and whether he can be made to give reparation without driving the person entitled to the elaborate procedure of a suit.

There are some useful privileges which an advocate has as an officer of the court. Clause (2) of S. 132, Civil Procedure Code, lays down that he will be exempt from arrest when he is going to court and returning from court to do his duty as a pleader. The privilege equally attaches to advocates in England and in America. Sometimes pleaders are appointed to act as commissioners or as receivers of property, the subject-matter of litigation. It does not fall within the scope of these lectures to deal with their duties as commissioners or receivers, but I would just by the way state that the most scrupulous honesty and fairness should be observed by any pleader that undertakes such a duty, and it would be wise on his part to consult the court whenever he feels any difficulty. It may fall on any of you to be appointed a commissioner or receiver; the best course on any difficult occasion would be to consult the court. As a commissioner you would have the privileges of the court itself and in order not to embarrass the trial of the suit, it would be proper either to consult the court when a question of difficulty arises or to reserve it for the decision of the court in executing the commission. In conclusion I would read to you the rules enacted by the Council of the American Bar with respect to the advocate's duties to the court :—

"It is the duty of the lawyers to maintain towards the court a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamour. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such

charges should be encouraged and the person making them should be protected.

"It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges".

"Marked attention and unusual hospitality on the part of lawyers to a judge, uncared for by the personal relations of the parties, subject both the judge and the lawyer to misconstructions of motive, and should be avoided. A lawyer should not communicate or argue privately with the judge as to the merits of a pending case, and he deserves rebuke and denunciation for any device or attempt to gain from a judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due to the judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

"A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf. The key to the solution of any difficulty in a question as to how to behave towards the court in any particular contingency will not be difficult if you remember on the one hand that you are partakers with the judge in the administration of justice, that your duty is to help him in it, and that, on the other hand, you have a right to expect from the judge that your client should have a fair hearing with respect to his grievances, that as members of an independent profession you have a right to urge every legitimate argument open to you on behalf of your client and to bring before the court every material that ought to influence it in its decision. At the same time as members of an honorable profession nothing again should be done by you which will in any way be unbecoming on your part as members of the public or as loyal citizens of the state. Nor would you in any case consider it your duty, to do anything which is calculated to diminish your own self-respect or to dwarf your own soul." [1]

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1. ( ) 18 M.L.J. 434 *et seq.*

TRANSLATION

OF

APARARKA'S COMMENTARY ON YAGNAVALKYA.

(*Continued.*)

Slokas 141, 142. — Heirs of disqualified persons.

" The Aurasa and Kshetraja sons of these, however, take shares, if free from defects ; the daughters also should be maintained until they are disposed of in marriage." 141.

" Their sonless wives, conducting themselves aright, must be supported; but such as are unchaste should be expelled, as also those who are hostile. 142.

The Aurasa sons and the Kshetraja sons :—Of these, eunuchs, and others, who are devoid of the sin of degradation, etc., take share. To an impotent person, an issue may be born by medical treatment, etc. Their daughters should be maintained up till marriage. Their sonless married wives also, if of good conduct, should be maintained. Those who are unchaste or hostile to the brother in law and others should be kept out : out of the house. As for maidens, though born after degradation, they should be maintained and given in marriage. Vasishta also says :

" They declare that the male offspring of outcasts are (also) outcasts, but not the females ; for a female enters (the family of) a stranger." [1]

The author, dealing with the inheritance to stridhan, *infra*, speaks of the characteristics of stridhana, though women are to have no right of inheritance. [2]

Sloka 143. — Stridhanam.

" What is given to a woman by her father, mother, husband or brother, or received by her before her matrimonial [3] fire, or presented to her on her supersession, etc., is denominated Stridhanam." 143.

What is given by the father and others :—*Adhyágni* : what is given at the time of marriage before the matrimonial fire, that is *Adhyagni*. What is given by reason of a second marriage (to a superseded wife) is *Adivedanika*. *Âdivedanam* is the wedding

1. S.B.E., Vol. 14, p. 68. Vasishta, Ch. 13, pp. 51-52.
2. See Sloka 142 *supra*. 3. Colebrook : " nuptials."

Sloka 143.
—
Stridhanam.

of another wife where there is a wife in existence. The meaning of च is 'etc.' By this, is implied other kinds of stridhana. It is as follows :—Wives should be made equal sharers [1]. The mother too shall take an equal share with the sons.[2] They should be given a fourth of one's share.[3] The daughters shall divide the ornaments of their mother.[4] These are the ways in which stridhana wealth is acquired.

Whatever else is owned by a woman, that is declared by Manu and others as stridhanam.

Katyayana.—"What is given to women at the time of their marriage, before the sacred fire, is denominated by sages their property : *Adhyagnikrita* : *i. e.*, 'given before the matrimonial fire.' What a woman receives while she is led to the house of her husband, is called the Adhyavahanikam and it is (another kind of) property of a woman."

"Anything which is given to a woman by the mother or father of her husband and that which is given in return to her humble salutations, is called *Pâdavandinika* or *Lâvanyârjitha i. e.*, wealth gained by salutation or loveliness."[5]

What a woman, either after marriage or before it, either in the mansion of her husband or of her father, receives from her brothers[6] or her parents is called a gift from the affectionate kindred.[7]

Vridha Vyasa:—That which is obtained by a maiden on the occasion of marriage, or after marriage, from the house of the father and brother, is called Saudayika *i.e*, a gift from affectionate kindred.

Similarly :—All that which is given to the bridegroom at the time of marriage belongs to the bride and are not divisible among the kindred.

Katyayana :—" The gift by the affectionate kindred having by them (the donors) been presented in order that the woman possessing it may live well, is declared by law to be her absolute property."[8]

" The absolute exclusive dominion of women over such a gift is perpetually celebrated, and they have power to sell or give it away as they please, even though it consists of lands and houses."[9]

As for what Narada has said

1. Yagnavalkya, Sloka 115.
2. Yagnavalkya, Sloka, 122.
3. Yagnavalkya, Sloka 124.
4. See per Vasishta, in commentary to Sloka 117 *supra*.
5. Colebrooke Vol. II, pp. 585, 586; Slokas 464-466.
6. Colebrooke says "from her lord," but the next sloka seems to confirm Apararka's reading.
7. Colebrooke Vol. II p. 594 S. 475.
8. Colebrooke Vol. II, p. 594, § 475.
9. Colebrooke Vol. II, p. 594, § 475.

"What has been given to a wife by her loving husband, that she may spend or give away as she likes, even after his death, excepting immoveables"[1] Sloka 143. Stridhanam

that relates to immoveables given through affection.

Katyayana :—What is received by a woman after marriage from the husband's family, from her husband's parents, is called (*Anvadheya*) " gift subsequent" by Brighu.[2]

" The trifle which is received by a woman as the prize or reward of household *labour*, of *using household* utensils, of *keeping* beasts of burden, of *watching* milch cattle, of *preserving* ornaments or of *superintending* servants, is called her " perquisite."[3]

Vyasa :—The utmost that can be given of wealth to a woman is 2,000 (panams); that and the wealth given by the husband—she can obtain (*use*) at her pleasure.[4]

Every year, the portion of wealth which amounts at the most to 2,000 Karshapanas[5] is the utmost share that may be given to a woman. पर : means utmost. What is given is *daya* or share. This share and what is given by the husband she may use at her pleasure in an unprohibited manner without getting the permission of her brother-in-law, etc. It is understood that to spend anything over and above that, the permission of the brother-in-law and others is wanted.

Manu :—" Such ornamental apparel, as women wear during the lives of their husbands, the heirs of those husbands shall not divide among themselves; they, who divide it among themselves, fall deep *into sin.*"[6]

This relates to the jewels always worn (by her.)

" Neither the husband nor the father nor the son nor the brothers are competent either in the taking or the giving of a woman's wealth. If any among these appropriates by force a woman's wealth, he is to be made to repay it with interest and shall also be punished.[7]

Katyayana :—Neither the husband nor the son nor the brothers in-law nor the father's kindred have been declared to have any power over a living woman's peculiar property; and those who deprive (her) of it are liable to he punished,

Manu :—" Such kinsmen, as by any pretence, appropriate the fortunes of women during their lives, a just king must punish with the severity due to thieves,"[8]

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1. S. B. E., Vol. 33, p. 50. Narada I, § 38.
2. Cf. Colebrooke, Vol. II, p. 588, § 468.
3. Colebrooke, Vol. II, p. 588. §. 468.
4. Cf. Colebrooke, Vol. II, p. 600, § 452, which differs from this in that if says 2/1000 of the estate should be given.
5. A small coin.
6. Manu Ch. IX, § 200.
7. Cf. Colebrooke, Vol. II, p. 594, § 475.
8. Manu, Ch. 8, § 29.

Sloka 143. Stridhanam

By (the phrase) "during their lives," it is said by implication that in the wealth of deceased women who were married in particular forms even the kindred have a claim.

Now the author speaks of the purpose for which were mentioned the characteristics of a woman's peculiar property.

Sloka 144. Inheritance to Stridhanam

"What is given to a woman by her relatives, sulka likewise and anvadheya, the relatives take these, if she dies without issue." 144.

"By her relatives": By the paternal uncles or maternal uncles and others. What is given (by them), and what is (there) of sulka, and what is (there) of anvadheyaka—by these all (kinds of) woman's property are indicated. That (wealth) when a woman dies issueless, the relatives shall take:—The meaning is that the wealth becomes that of the relatives.

It was mentioned generally that the relatives take. The author now mentions what relatives become the heirs in particular cases.

Sloka 145. Inheritance to Stridhanam

"The property of a childless woman married in the four forms of marriage beginning with Brahma belongs to the husband; but if she leave issue, it shall go to the daughters; in the remaining forms of marriage, it goes to the father." 145.

The wealth of an issueless woman married in Brahma, Daiva, Arsha and Prajâpatya (forms of) marriage becomes that of the husband. But that of the woman married in Asura, Gandharva, Rakshasa, Paisacha (forms of) marriage becomes that of the father. If she leave issue, *i. e.*, if she is a woman having children, (the wealth becomes) that of the daughters only. This s with reference to all kinds of marriages. This is for the purpose (of mentioning that) even when sons are alive, the wealth of the mother becomes that of the daughters. Therefore "the mother's wealth, the daughter's (take) as has been already expressed."[1]

The order of succession was not evidently mentioned there. Therefore—

Katyayana :—"On failure of daughters, that estate *(of a married woman)* shall descend to her sons; what is given by rela-

1. Yagnavalkya, § 117.

tives goes to relatives; and on their failure it becomes that of her husband." Sloka 146.

Inheritance to Stridhanam

The latter half relates to a woman married in the Asura and other forms.

Manu:—"The wealth that a woman has received at any time *as a gift* from her father, it should be taken by the daughter of a rahmani co-wife or the issue of that daughter."

By what has been said by him again—

"It is ordained that the property of a woman married by the ceremonies called *Brahma, Daiva, Arsha, Gandharva* or *Prajapatya*, shall go to her husband, if she die without issue"[2]

it should be understood that the wealth of a woman married in the Gandharva form goes to the husband in the alternative (*i.e.*, either to the father or the husband.)

Therefore he (Manu) himself says—

"But her wealth given on the marriage called *Asura* and others, is ordained, on her death without issue, to become the property of her father or mother."[3]

The participation of the bride price of the girl married in the Asura form is with the uterine brothers and in their default, with the mother. To the same effect Gautama says—

"The sister's fee belongs to her uterine brothers and on their default, to the mother."[4]

Baudhayana:—

"The wealth of a deceased maiden (her) uterine brothers shall themselves take. On their default it belongs to the mother; and on her default it belongs to the father."

Manu:—"Should a daughter appointed to raise up a son for her father die by chance without a son, the husband of that daughter may, without hesitation, possess himself of her property."[5]

This (rule) is when a daughter is appointed (by saying) that the son, who is to be born of this girl, shall be my son.

But where she is appointed (by saying) that this girl shall be my son, Sankha and Likita say:—

"The husband does not inherit the wealth of a deceased sonless appointed daughter."

Paithinasi:—"The wealth of a deceased appointed daughter, the husband does not inherit; but it is to be inherited by the mother of the sonless woman or by her mother-in-law."

Brihaspati:—"The mother's sister, the maternal uncle's wife, the wife of a paternal uncle, the father's sister, the mother-in-law,

1. Manu, Ch. IX, §. 198.
2. Manu, Ch. IX, §. 196.
3. Manu, Ch. IX, § 197.
4. Cf. S. B. E., Vol. 25 p. 303. Narada Ch. 28. § 25. Also Mitakshara.
5. Manu, Ch. IX, § 135.

Sloka 146. the elder brother's wife are mentioned to be equal to one's mother.

Inheritance to Stridhanam When she has no son of her body (aurasa) or (any other) son[1] or daughters or the son of the first (two) above mentioned, her sister's son, etc., shall take.

Of one born before *i.e.* the elder brother's: wife *i.e.* the elder brother's wife.

By reason of having dealt with Stridhanam the author now shortly deals with a girl promised away in marriage.

S. SRINIVASA AIYAR.

(*To be continued*).

NOTES OF INDIAN CASES.

Vidyapurna Thirthaswami v. Uganna.—I.L.R. 34 M. 231.—In this case a question arose whether the mulgar or mulgenidar, or both, were liable to pay the increased assessment that might be fixed by Government. Prior to the mulgeni a certain amount was payable to Government. This was to be paid by the mulgar. Subsequent to the mulgeni there was a fresh settlement and an enhanced assessment was fixed by Government. The question was who should pay this enhanced assessment. The learned judges held that but for S.35 of Act II of 1864 the additional assessment was payable, both according to principle and equity, by the mulgar and mulgenidar in proportion to the benefit which each derives from the land. Section 35 of Act II of 1864, which the learned judges state to be a bar to the application of the principle, enacts:—" It shall be lawful for any person claiming an interest in land which has been, or is about to be attached, to obtain its release by paying the arrears interest and costs incurred; and all such sums, if paid by a tenant may be deducted from any rent then or afterwards due by him to the defaulter." It must be observed that this section does not declare that the tenant is entitled at all events to a reduction. All that the section says is that if a tenant pays the arrears of revenue, interest and costs incurred, such sums *may be deducted* from any rent then or afterwards due by him to the defaulter. The section does not say that he is entitled to the deduction at all events. In fact it cannot say so without reference to the terms under which the tenant holds his lease. If, under the lease, the

1. Cf. Jimutavahana : step-son.

tenant is bound to pay the revenue himself, S. 35 does not exclude such contract or term of the lease and entitle the tenant, notwithstanding the terms of his lease, to deduct the amount paid by him in respect of revenue from the rent. We do not think the learned judges intend to lay down a different principle in such a case. Where the contract of lease does not provide specifically for a particular contingency and the court will imply a term as attached to a contract upon a particular contingency not within the contemplation of the parties at the time of the lease —in such a case also the implied term will be read into the lease and S. 35 cannot operate as a bar to the enforcement of such an implied term. S. 35 can only be applied in the case of a contract to the contrary. If, according to the learned judges, the law will imply that the landlord and tenant will pay in certain proportions under particular circumstances, the operation of that term cannot be affected by S. 35 It might be that all that the learned judges meant was that by reason of S. 35 they could not import a term that the landlord and tenant should pay in certain proportions. The language of S. 35, as already said, does not support the view that the section declares the right in favour of tenants irrespective of the terms of their leases.

AsundiBasavva *v.* Bareddi Govindappa.—I.L.R. 34 M. 249.—After Order XLI, r. 33 this decision ceases to be of any practical importance in cases governed by the new code. According to this rule the appellate court has full power, to do complete justice to the parties, to reverse a decree passed against *A* and to substitute a decree against *B* although no appeal might have been preferred.

Iburamsa Rowthen *v.* Theruvenkatasami Naick I.L R. 34 M. 269. The question for the consideration of the Full Bench in this case was whether, where an item of family property was conveyed to separate persons separately by different coparceners, the alienee of any one coparcener might bring a suit against other alienees for his share or for a general partition. The learned judges begin with the principle that one member cannot sue the other members for partial partition of the family property. They also admit as a settled principle that where one member conveys his interest in one item to a stranger the latter cannot sue the other members for partition of his share as against

the other members but must sue for a general partition. It has to be remembered that under the strict doctrine of the Mitakshara Law such an alienation is invalid and the purchaser in the Madras Presidency as in Bombay has been held by judicial decisions to be entitled to an equity by which he can enforce his rights under the alienation in a general partition, *i.e.*, notwithstanding the doctrine of the Mithakshara Law the alienee is held entitled to the alienor's share but only subject to equities and the mode of enforcing those rights is by bringing a suit for partition. Before proceeding to consider the other propositions considered by the learned judges it has also to be remembered that it is not open to one member by his own unilateral will or act or expression of intention to sever the family status and to become divided. A partition can only be the result of an agreement or a decree of court. If it is not open to a member of a family to become divided either with respect to the whole or a part of the family property by his own mere will or act, that result cannot be reached by the transfer of his rights to a stranger. A stranger claiming under him cannot be in a better position. The transfer, therefore, cannot have the effect of severing the status either as regards the property alienated or as regards other properties. Of course a stranger cannot become a coparcener with others and no member can predicate that any particular property is his so long as the family is joint. An alienee from a member cannot claim to have the partition of his alienor's share in the property specifically conveyed to him. The alienor's rights can only be adjusted and determined in the general suit for partition which the alienor may bring. Until then it will follow that the alienee has no specific rights in the property conveyed to him or his alienor's share in the property. That is apparent from the two Privy Council cases *Suraj Bunsi Koer* v. *Sheo Persad Singh* [1] *Hardi Narain Sahu* v. *Ruder PerkashMisser*,[2] relied upon by the learned judges who constituted the Full Bench. The learned judges lay some stress upon the form of the decree adopted by the Privy Council in these two cases. With regard to this it must be observed that we do not think that the form of the decree so adopted in these cases was an absolute one to be applicable in all cases or

1. (1880) I. L. R. 5 C. 148. 2. (1884) I. L. R. 10 C. 626 at 637.

that the form was laid down by the Judicial Committee as a universal one to be adopted irrespective of all considerations. In fact these two decisions apparently rely upon an earlier decision of the Privy Council, viz., *Deendyal* v. *Jugdeep Narain Singh*[1]. In that case the Judicial Committee observe: "They ought not to interfere with the decree under appeal so far as it directs the possession of the property, all of which appears to have been finally and properly found to be joint family property to be restored to the respondent." The report in the Indian Appeals does not show that any argument was addressed as to the form of the decree or on the question as to any relief to be given in such suits, viz , by the son against the purchaser. In the report of the same case in I. L. R. 3 C. at page 261 apparently there are some observations in the argument which may throw light upon the question as to the form of the decree actually adopted. "Sir R. Collier—If the plaintiff recovers possession of the family estate, he recovers under a charge. Sir B. Peacock.—He will recover the estate less what his father would have been entitled to on a partition'." The reason for their Lordships not being able to give a more precise declaration will be seen from what appears at the end of their judgment. Their Lordships say: "They cannot make any more precise declaration as to Toofani Singh's share, since, if a partition takes place his wife may be entitled to a share: and further, that there will be no order as to costs of this appeal." The view taken here that the purchaser can be turned out of possession cannot be said to be applicable as a general rule: There are very many cases where the purchaser cannot be turned out of possession as where the purchaser is placed in possession by the member or the manager for the time being. This is, however, beside the question. The view that the purchaser is only entitled to take proceedings to have his share ascertained by partition and that the other member is entitled to recover the whole property apparently proceeds upon the law of Bengal according to which it will not be possible to say what the share may be except in a suit for partition as there may be females who will be entitled to shares besides the male co-parceners. That is apparently the reason why the decrees in the Privy Council cases took that form. Here in

1. (1877) I.L.R. 3 C. 198 s.c. L. R. 4 I.A. 247.

Madras where there is no question of females being entitled to shares there may be no difficulty. If, however, the Privy Council be taken to have laid down an absolute principle applicable to all cases, the purchaser can only work out his right in a general partition suit and the son will be entitled to recover the whole including the share purchased by the alienee. But even assuming that it is the law that a son or other member is entitled to recover his share in the part alienated, his alienee will not necessarily be in a similar position and be entitled to sue for a share in the part alienated. If the right of the purchaser, whoever he may be, is only to work out his rights in a general partition and even that is only a concession which the courts have given him, it is not easy to see how it will follow from the fact that one member is entitled to sue for partition of a part that an alienee will be entitled to such right. It may be admitted that it is a question for the member to decide whether he will sue for his share or no; but under the Mithakshara Law where no alienations are strictly possible purchasers from members are not in the same position. However, after the admission of the respondent's pleader in the case, apparently the learned judges did not think it necessary to give fuller reasons for their view.

SUMMARY OF ENGLISH CASES.

The King *v.* Godstone Rural District Council.

[1911] 2 K. B. 465.

Practice—Documents—Inspection privileged—Right of elector.

S. 58 of the Local Government Act provides that every elector of a parish could, without payment, inspect and take extracts from all books, accounts and documents. The question was whether a case submitted to counsel and his opinion thereon were documents within the meaning of the section. An elector of a parish threatened litigation against the council of the district and the council took legal opinion as to their liability. The elector claimed a right of inspection. *Held* that the case and opinion were "documents" within the meaning of the section and that under the circumstances the court could not enforce his right.

Millas *v.* Spooner. [1911] 2 K. B. 473 (C. A.).

Restrictive covenant—Purchaser for value without notice—Subsequent purchase with notice—Effect of.

A purchaser of land for value without notice of any restrictive covenant can convey it free of the covenant to a subsequent purchaser even though the latter may have notice of the covenant.

A certain person took a lease of certain premises covenanting not to carry on therein any noisy or offensive trade other than that of a pork-butcher. He was also carrying on the trade of a general butcher in another place in the same street but under a different landlord. He sold to plaintiff his interest and assigned to him the good-will of his business as a general butcher, covenanting with the plaintiff that he and his executors and assigns would not carry on the business of general butcher in the first mentioned premises when he was carrying on the business of a pork-butcher. He afterwards gave up the business and surrendered his lease of the first mentioned premises to the landlord. The landlord granted a new lease of the same premises to the son of the former lessee which lease contained a covenant that the lessee would not carry on upon the premises any business noisy or offensive other than "that of a butcher," not as in the old lease "that of a pork-butcher." At the time of the father's surrender of his lease the landlord had in fact no notice of the restrictive covenant but the son knew of the existence of the covenant. The son carried on the trade of general butcher there. *Held*, in a suit by the plaintiff against the father and son, that the landlord had no notice of the father's covenant and consequently could grant a lease to the son free from restriction and that the son could not be restrained from carrying on the trade of a general butcher.

Lloyd *v.* Grace, Smyth & Co. [1911] 2 K. B. 489.

Principal and agent—Authority of agent—Fraud of agent—Liability of principal.

A solicitor employed a clerk under an agreement in writing as his "conveyancing manager" and generally as his "managing clerk in the business of solicitor" carried on by defendant Plaintiff, who had made investments, being dissatisfied with the same, went to the defendant's office and consulted the managing clerk. On the advice of the managing clerk the plaintiff handed to the clerk the title-deeds of some house and also a mortgage to secure advances. She executed a conveyance of the same to the clerk. The managing clerk deposited the title-deeds and secured an advance for his own use and at the same

time called in the mortgage-money and misappropriated it. The defendant was not aware of the transaction till the discovery of the fraud and the plaintiff believed that she was the client of the defendant.

Held by *Vaughan Williams* L. J. that there was a holding out by defendant of the managing clerk's authority to act on his behalf so as to estop the defendant from denying the agent's authority.

By *Farwell* and *Kennedy* L. JJ. that the clerk was not acting within the scope of his authority as managing clerk in taking a conveyance of the freehold and a transfer of the mortgage, and that the defendant was not liable to recompense plaintiff for her loss.

Saccharin Corporation, Limited *v.* Chemische Fabrik von Heyden Aktiengessel-Schaff.

[1911] 2 K. B. 516 (C. A.)

Practice—Foreign corporation—Business in England—Agent—Service of writ.

The defendants, a foreign corporation carrying on a business outside England employed an agent for the purpose of the sale of their goods in England. The goods were delivered to the customers direct from the wharves. The agent had also power to enter into contracts on behalf of the defenants without their sanction.

Held that the defendants were carrying on business at their own place of business and a service of writ on the agent in England was valid in an action by plaintiffs against defendant for breach of an agreement.

Maas *v.* Gas Light & Coke Company.

[911] 2 K. B. 543 (C.A.)

Practice—Discovery—Interrogatories—Malicious prosecution—Information of defendants—Steps taken by defendants.

Plaintiff, who was charged with the offence of theft and acquitted, brought a suit against defendants for malicious prosecution and wanted to administer the following interrogatories:—"What information, if any, had you that induced you to prosecute plaintiff ? What steps were taken to ascertain whether the charge was true or not ? What grounds had you for supposing that plaintiff committed the offence charged, etc. ? What are the facts and circumstances on which you relied as shewing that

you had reasonable and probable cause ?" The Master and Judge disallowed the interrogatories.

On appeal—*Held* by the full court (1) that the second interrogatory ought not to be allowed and (2), *Kennedy* L.J. dissenting, that the first interrogatory ought not to be allowed in the absence of special circumstances.

New Fenin Compagnie Anonyme D'Assurance De Madrid v. Accident, Fire and Life Assurance Corporation, Ltd.

[1911] 2 K.B. 519 (C.A.)

Practice—Security for costs—Cross action—Plaintiff in cross-action resident out of jurisdiction—Discretion.

There is no hard and fast rule as to what the circumstances are under which an order for giving security for costs ought to to made against a foreigner residing out of the jurisdiction who, either as plaintiff in a cross action or as defendant, is setting up a counter-claim. The court must, in the exercise of its discretion, see whether the defendant is simply setting up some claim by way of defence to an action or is bringing a cross action having nothing to do with the transaction which forms the subject-matter of the claim against him. In the latter case he ought to be ordered to give security for costs.

Knapp v. Harvey. [1911] 2 K. B. 725 (C.A.)

Practice—Interrogatories for ascertaining opponent's witnesses.

Courts ought not to administer interrogatories, the object of which is to ascertain the names of persons who will be called as witnesses to prove plaintiff's case.

Robinson v. Beaconsfield Rural District Council.

[1911] 2 Ch. 188. (C. A.)

Negligence—Collateral negligence—Liability to cleanse cess-pools—Liability to dispose of sewage matter—Contractor.

The Beaconsfield Rural District Council had undertaken, under the powers given by the Public Health Act, 1875, the cleansing of cess-pools in the district. They entered into a contract for the purpose with a contractor who cleansed the cess-pools but deposited the sewage matter in the plaintiff's land. Plaintiff sued the Council for damages. It was contended by

the Council that they had engaged an independent contractor and that they were not liable.

Held—by *Joyce* J. in the Court of the First Instance and by *Buckley* L. J. in the Court of Appeal, following the observations of *Lord Blackburn* in *Dalton* v. *Angus*[1]—that the exemption from liability for the negligence of the contractor was only in respect of collateral negligence and was not available when a person caused something to be done which threw on him a duty (as in this case) of disposing the sewage in such a manner as not to commit a trespass.

Per Curiam :—The contract being only as to cleansing did not cover the disposal of the sewage matter, so that the liability of the contractor ceased with the cleansing of the cesspools; the sewage became the property of the Council and the Council was liable for the trespass caused.

Knill *v.* **Dumergue.** [1911] 2 Ch. 199 (C. A.)

Pensions Act (*India*), 1871, *Ss.* 11 *&* 12—*Annuity to retiring Civil Servants.*

The annuity payable to "Retired members of the Indian Civil service" is not pension coming within Ss. 11 and 12 of the Indian Pensions Act and is liable to sequestration in the English courts. The Pensions Act can have no application to annuities to which a party is entitled as a matter of contract. The restrictions imposed by the Pensions Act are only of local applicability and have no application to proceedings in England.

In re **Ind Coope & Co., Ltd.** [1911] 2 Ch. 223.

Mortgagee—Rent accrued due—Right to.

The mortgagee is entitled, on taking possession of the mortgaged property, not only to rents accruing due thereafter but also rents already accrued due and in arrear. In this matter, the leases executed before the mortgage and those executed after stand on the same footing. In the eye of the law, the mortgagor is in possession only by his leave, and his is the reversion expectant on the lease.

But floating-charge-holders are not entitled to this. They are not themselves entitled to take possession, and therefore their claim is restricted to what is found existing when they seek to

1. (1881) 6 A. C. 740, 829.

enforce the charge. Assignments of book-debts are binding against them even though notice may be given by the receiver appointed in their action earlier than by the assignees.

Haynes *v.* **Ford.** [1911] 2 Ch. 237. (C. A.)

Trading in one's own shop—Building used partly as shop partly as warehouse, and partly for residential purposes.

In this case, the Court of Appeal had to consider what "trading in one's own shop" meant as opposed to "trading on a private house, warehouse or stall." The question arose on the construction of a local Act which prohibited the latter within a certain area from the market. The house where the defendant was trading was a four-storeyed one, the first story of which was being utilised by him for sale, the second as a warehouse (only for the shop), and the third and fourth for residential purposes. The terms on which the sale was conducted were wholesale. Commission business used also to be done. *Held*—That none of these circumstances brought him within the prohibition. He was trading in his own shop and was exempted.

Fauntleroy *v.* **Beebe.** [1911] 2 Ch. 257.

Conversion—Order for sale, operating as—Administration action.

An order for sale in an administration action operates as a conversion from the date of the order, *i. e.*, when real estate is directed to be sold, it ceases to continue the character of real estate for purposes of inheritance although the sale takes place after the death of the person entitled.

In re **Earl of Sheffield: Ryde** *v.* **Briston.**

[1911] 2 Ch. 267 (C. A.)

Will—Construction—One year's wages to servants.

Gift of "the amount of one year's wages" to "each of my servants indoor and out-door" in a will extends to not only to servants entertained on yearly wages but also to servants on weekly wages. The case might be different when the gift is of a year's wages.

In re **Green : Green** *v.* **Meinall.** [1911] 2 Ch. 275.

Spes successionis—Not right, title or interest.

Section 2 of the Deceased Wife's Sister Marriage Act, 1907, provides :—" No right, title, estate, or interest, whether in possession or in expectancy and whether vested or contingent at the time of the passing of this Act * * * shall be prejudicially affected * * * by reason of any marriage heretofore contracted as aforesaid being made valid by this Act." A question arose as to whether this section prevented brothers of half-blood of a deceased intestate, who died after the passing of the Act, by a marriage with a deceased wife's sister dead long before the Act, from sharing with brothers of the full blood by a marriage not open to that objection. It was *held* by *Warrington* J., following the decision of *Kay* J. in *In re Parsons*[1], that a *spes successionis* was not a right, title, estate or interest saved by the Act; and therefore the issue of both the marriages were entitled to share in the distribution.

In re **Tewkesbury Gas Co. : Tysoe** *v.* **The Company.** [1911] 2 Ch. 279.

Covenant to pay, on or before, on or after : meaning and effect of—Covenant to pay at covenantor's option—Proviso, repugnant.

A covenant to pay without specifying a time for payment creates either a present liability to pay or at least a liability to pay on demand. A covenant to pay on or before a certain day creates a liability to pay on the day named with an option of earlier payment. In the case of a covenant to pay on or after a certain day, there is similarly an option to pay on the day named, but no liability till after the day is passed and possibly not even then, till a demand is made. It is true that any subsequent day for ever would be after the day named, but it would appear that an obligation to pay *solvendem nunquam* or *solvendem* at Doomsday is an obligation to pay *praesenti* or at any rate on demand, the *solvendum* only being rejected. If there be a covenant to pay with a proviso that the covenant shall only be enforced at the option of the covenantor, the proviso would be bad for repugnancy.

In this case, a company issued a series of debentures each of which contained a covenant by the company that it would on or

1. (1890) 45 Ch. D. 51.

after "January 1, 1899, pay to the registered holder of the debenture the principal sum thereby secured." The debenture then stated as follows :—"The debentures to be paid off will be determined by ballot and 6 months' notice will be given by the company of the debentures drawn for payment." It was contended that the effect of the latter clause was that the company was not bound to pay any of the debentures unless they elected to do so and gave the notice provided for in the debenture. His Lordship *Parker* J. rejected this construction and *held* that, on a proper construction of the document, the second clause gave only an option of earlier payment in the six months' notice ; that the company were certainly liable to pay on demand made at any time after 1st January 1898, and that, even on the construction suggested by the defendants, the proviso being void for repugnancy, the liability to pay would arise immediately on demand, if not at once.

JOTTINGS AND CUTTINGS.

Success.—The following is taken from an article in the *Law Students' Journal* by "J. I." :—Most of you, my readers, are young men just starting in life, and many of you aiming at a successful and honourable legal career. I say many of you, for a large number of you are not aiming at anything of the kind, but are simply going along in a haphazard manner, taking whatever Fate may bring you. You say, perhaps, you do your best, but on close examination of yourselves probably you will admit it is a poor best. You are not travelling the road to Success, though, of course, it is possible you may reach it in a way, but if you do you will not deserve it, and the probability is you will not get it. To you all I would say, turn matters over in your minds, and think whether it is not worth while to make an effort. Every man has, no doubt, some good material in him ; the thing is to use it, and make the most of it. Think what there is in you, and get some honest belief into yourselves, and with faith and determination go ahead ; and, starting thus, concentrate on the immediate object and remember that reward is sure to come. And you who are really aiming at good things, ask yourselves if you have up to now brought out all the faith and determination and concentrated effort that is in you. Get to believe more in yourselves than you have ever done before, and though you may already be on the right road, you will make your path safer and surer than it has been, and will go on with a sure knowledge that you will attain, and will be able to say with all complacency :

"Confident that what the future yields,
Will be the right unless myself be wrong."

But there may be older readers who have not succeeded in life, or not to the extent they desired, and who may in the discontent and sadness of their thoughts be induced to condemn what is here written as nonsense. I would ask them not to judge thus hurriedly, but to look into their past lives and honestly think matters over. The past is not always pleasant matter for reflection; and to worry over the past is worse than useless. The past is only useful in so far as it teaches us lessons; what man should ever be concerned with is the present, and the future. Still, to arrive at the truth in this matter, it may be necessary to glance back on the past. Will you not see there wrong action, or want of action, which has produced present results? It must be so with half of us. Let us, however, not be ashamed, but try and go forward aright in the remnant of time here that is still left to us. Because things have not been altogether well with us, let us not be unfair. Rather let us recognize our own mistakes, and as regards others coming after us, not discourage them, but be ready to point out and press upon them the right and straight path to success, though we, alas! may have missed it. Yet if we have missed it, is it too late to try and regain it? We may not be able to attain now those summits that we could have reached to had we known the right course, and been able to keep in it; but we can still do something. He is a fool who sits down to bemoan the past. It is done with, it is over, blot it out if you have learned the lesson, and go on afresh, even though a humble effort now is only possible. After all, though you may have lost the freshness of youth's energies and aspirations, you have acquired a vast experience. Let us all make the best use of those talents we have and the time we yet have,

"For age is opportunity no less
Than youth itself, tho' in another dress."

Finally, I cannot do better than conclude with those truly encouraging lines of Robert Louis Stevenson—lines which may be taken to heart and acted on by everyone, for have we not all of us, young or old some task, some duty, still left us to perform?

"Ever ready and ever true
To the toil and the task we have to do,
We shall sail securely, and safely reach
The Fortunate Isles."

* * *

Literature and the Law.—Many eminent men of letters have begun their careers as lawyers, and have speedily freed themselves

from the ties of what seems to have impressed them as a singularly uncongenial pursuit. It is an often repeated saying, that such men find the law irksome, and there is a widely prevalent opinion that law and literature do not go together. As a matter of fact they have much in common—the debt of literary men to the law is immeasurably great, and instead of stifling their talents, their knowledge of the law has had, in spite of every possible objection, a most stimulating effect upon their powers.

It is something more than a mere coincidence that Thackeray, Masterlinck, Anthony Hope and Galsworthy should have entered the bar, that George Meredith and Arnold Bennett should have been equally great in two professions, that Scott, Dickens, Fielding and Balzac should not always seem to be writing from a layman's standpoint. Nor is it an incongruity to be attributed solely to a remarkable accident that Thomas Nelson Page and Robert Grant should have turned with success from the law to literature. In fact there is nothing surprising or exceptional in any of these instances. Why should not such men have been powerfully attracted by a study more closely bound up with life than any other? They may have tired of its dreary technicalities and dry abstractions, and a profession so enamored of dull facts and cold logic may have sometimes oppressed them with a sense of its sterility. But law has also another side, which attracts rather than repels, and the charm of the law is something of which it is hard to write and which every lawyer who has not taken leave of his imagination well understands for himself. And to all these men, the higher, more human side of the law gave something which may be seen enshrined in the work of their hands.

Even as a painter studies anatomy to perfect his knowledge of the human form, so may a novelist study the dry bones of the law that he may write intelligently of the living society modeled upon them. The law may help him to master arts of observation and analysis which must be exercised in the production of every great novel. It may help him to achieve realism when his imagination threatens to make him merely fantastic.

It may be that some authors have disagreeable memories of tedious hours in a lawyer's office, and that they have forsaken the law in disgust. Yet we find these selfsame writers applying the intellectual processes of the lawyer to the study not of a few select cases of wills, torts and real property, but to the illimitable reservoir of fact in which all case law has its origin. They have not

Mixed Juries in England.—A petition was presented to the House of Commons by Mr. Hunt, in which petition certain women laid claim to the vote. (The papers headed their account of the matter "Extraordinary Petition"—the event must be one of the earliest in the annals of the Suffragettes.)

Thereupon another honourable Member suggested, amid laughter, that if women had civil rights they must be prepared to undertake civil duties, and there would be "a certain impropriety" in a jury consisting of a number of persons exactly equally divided as to sex being shut up together for the night. It is curious to see the old arguments cropping up again. Probably the question involved is more embarrassing in the States than it would now be here. The Juries Detention Act, 1897, enables us to dismiss the jury to their homes in cases other than treason and murder. We have not any exact knowledge on the point, but rather expect that, in many of the States at any rate, the jury are still unable to separate before verdict in any case of felony.—*Law Notes.*

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The Late Judge Willis.—It is worth while recording that in "Who's Who" the late judge set down his recreations as follows:—"Collecting books, both old and new, walking by the side of brook and river, speaking to everybody he meets, and seeing how much there is in others to be admired and loved."

The stories told about a man of such personality and originality are naturally numerous. He was very genial and talked freely to strangers. One night on the way home, having chatted with fellow-passengers in the bus, he requested the conductor to put him down at the "Green Man," the nearest stopping-place to his house. On hearing this request an old lady said: "My good man, you take my advice; don't you go so much to that 'Green Man' and you won't be so talkative." Judge Willis, a teetotaller, was much amused, and often told the story against himself.

He once said: "I wish people would not use the expression, 'Thanking you in anticipation.' Very often nothing comes of it, and, in any case, it is only an attempt of the writer to gain a certain desire." He advocated plain English at all times.

* * *

He hated slang and slipshod language. "They will all censure me," he remarked on one occasion, "if I confess that I don't know anything about 'oof'." On another occasion he said: "Don't talk about people being in the same boat when they are not in a boat at all." He loved children. Once he refused to allow a noisy baby to

be taken outside his Court with a breezy : "Let it remain, babies don't disturb me." Alluding to an employer who gave him "enough to live on," Judge Willis once wrote, "I said to my master, 'I enter your place to get out of it as soon as I can,' but I never left the place till the work was done." And, he continued, "Rejoice in your work ; never mind what it is, unless you cannot put it within the Ten Commandments * * No young man is entitled to get into debt for his own personal advantage or ornament."

Judge Willis once wrote a column article in a newspaper to prove that a man can live on 40*l.* a year, and fortified his arguments with his own experience. He declared last December that he had never ridden in a tube railway, never watched a horse race, never gambled a penny, never entered a place of amusement when a lad, never ran into debt, and never borrowed money.

The late Judge was once a fellow-guest, at a Folkestone hotel, of Mr. T. P. O'Connor, who afterwards gave the readers of a weekly paper his impressions of "the vitality of that tireless, bustling, whirlwind of a man." It was impossible, said "T.P.," to be dull for one second in his company. Among other things, Judge Willis knew Milton well, had a fine voice, an elocutionary delivery, and "no false shame." So through the lanes and by the shore in the Folkestone district Mr. O'Connor "spent day after day hearing him roll out those passages in Milton which have been the delight of lovers of poetry for two centuries".—*Law Notes.*

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A Woman Judge.—It is reported that the County Court of Eagle County, Colorado, is presided over by a woman judge. A few months ago her husband, who was Judge Peter Tague, died, and the County Commissioners were so impressed with his wife's capabilities that they gave her his place on the Bench. Mrs. Tague's father was a judge, and her earliest memory is that of going into the old Court-room and hearing her father try cases.

Apparently the County Commissioners believe that she is the right person in the right place, for although there were half-a-dozen applicants for the appointment after her husband's death, they asked her to take the place. She protested that she was not a lawyer, but the Commissioners declared that they did not need a lawyer, but wanted some common sense. People call Mrs. Tague "the common sense judge," because they say it fits.

A great deal of Mrs. Tague's work is probate cases. She is a Notary Public, and also takes care of the Land Office work in Eagle

County. She is a Democrat, and has cast her vote ever since suffrage was granted in Colorado eighteen years ago.—*Law Notes.*

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Parliament Act 1911.

(1 & 2 *Geo. V. C.* 13.)—18*th August*, 1911.

Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:

And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation:

And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act appears for restricting the existing powers of the House of Lords:

Be it therefore enacted, &c.

Sect. 1.—(1) If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified, notwithstanding that the House of Lords have not consented to the Bill.

(2) A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or any money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this sub-section the expressions "taxation," "public money," and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His

Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate, the Speaker shall consult, if practicable, two members to be appointed from the Chairmen's Panel at the beginning of each Session by the Committee of Selection.

Sect. 2.—(1) If any Public Bill (other then a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the third of those sessions.

(2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.

(3) A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.

(4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certifies by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the House of Lords in the third session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

the British colonies or possessions and such judges in any such colony or possession as may be appointed for the purpose by Order in Council. The present Order appoints for this purpose a number of Courts in India and Burma and the judges of those Courts.

CONTEMPORARY LEGAL LITERATURE.

The July—August number of the *American Law Review* opens with a learned article on "The Judiciary and the Administration of the Law" in which the writers, after getting the opinions of the Bar Associations in various states of the United States of America, discuss the general defects to which the Judiciary is generally subject in those states and point out the remedies that ought to be adopted. As connected with the above subject they have also discussed the question how far the lawyers, the jury, the public and the present state of the law in its various branches are responsible for things being as they are. In the course of the article the writers say :—"In order to preserve our liberties and to maintain the highest interests of mankind, the Judiciary should not be free from just criticism of its acts even though that criticism be contemporaneous." The absence in the United States of solicitors as a separate branch of the profession has, the writers say, taken away the best method of determining who deserve to be the leaders of the bar.

The solicitors' opinion is an expert opinion in the matter. Judges have to be selected from the members of the bar for which selection there is no fixed standard. The judicial office has never been so attractive as a reward of professional success in America as its has been in England. The tendency has frequently been to choose the more mediocre members of the profession and thus to produce in many cases the anomalous situation of a judiciary which does not command the intellectual respect of the bar which practises before it. The overturning of the ancient legal concepts with only a tardy substitution of newer and clearer modes of thinking, the absence until very late of a better class of law schools, and the technicality of the modes of procedure are next mentioned as a second cause of the present defective system. A third influence which has been pointed out as embarrassing the administration of law is the unprecedented increase in litigation.

These three influences which ordinarily exist sometimes co-operate with the natural frailties of human nature, carelessness, prejudice, and even corruption of the judges, and thus hinder the due administration of justice, giving room for criticism of the judiciary. The remedies that are pointed out are (1) a high standard of legal knowledge at colleges to ensure competent judges; (2) a code of procedure devoid of technicality and capable of suiting itself to all kinds of legal action that may newly arise; (3) a highly educated, active and firm series of Bar Associations capable of correcting the judicial and extra-judicial wrongs of the judiciary and of the legal system; (4) an intelligent and competent jury, if the jury system is so far to be allowed to prevail; (5) raising the salary of the judges so as to invite the best talents in the country; (6) the appointment of judges from the best lawyers without regard to political considerations and with a code of ethics for the judiciary setting down the high principles which ought to govern the judges in dealing with the cases before them, the lawyers who practise before them, and the interests of the state in general.

How far these conditions apply to India we leave our readers to judge.

The next article in the same Review dealing with "The Development of a Scientific View of Law" discusses how from the primitive conceptions of law having been an emanation directly from God, the modern idea that it is the creature of man has risen. The writer, in the course of the article, states how legal institutions were once explained as the work of the gods Jupiter and Apollos, Themis and Egeria; how Nature and the Laws of Nature (Roman *Jus Gentium*) and then International Law worked a change in this idea; how in the 16th and later centuries different conceptions of society began to prevail so as to give rise to two theories of law, *e. g.*, social contract theory and force theory (*i. e.*, the sovereign being the source of all law); how the historical and anthropological methods have been useful in the investigation of other institutions of mankind such as social organization, marriage, language, religion, property or ownership, and how those methods can usefuly furnish, if applied to law, a basis for a science of law. The writer concludes as follows:—The scientific study of law must proceed as a study of customs and the actual conduct of peoples or groups, and that is

needed for such a well known text book as BEST on *Evidence.* It has now gone through eleven editions and has been adopted as a text book in many of the universities. In the present edition there has been a change of editorship, but this change does not carry with it any fundamental alteration in the subject and in the plan adopted by the original author himself and by the late Mr. Lely who was editor of some of the previous editions. The alterations in the law which have taken place since the last edition have been embodied and the recent cases have also been included. In this edition the author has also given a digest of the Canadian Law of Evidence and has thus made the book specially useful also to Canada. We trust the book will be found useful both by the students and practitioners.

The Common Law of England: By W. BLAKE ODGERS, K.C., and WALTER BLAKE ODGERS. 2 Vols., 1911. Sweet & Maxwell, Ltd. Price £2-10*s.*:—Mr. Odger's name is familar in all places where the English Law is studied. He is well known as an able and learned lawyer and as such his books are well known. A treatment by him of the Common Law of England is bound to be interesting. Broom's Commentaries on the Common Law have now become antiquated and is very little read by students or practitioners. The present treatise is intended to take its place, and we feel no doubt that the scientific and learned treatment of a subject in which Mr. Odgers is a specialist, *i. e.*, the Common Law of England, will be an interesting reading and be useful to all lawyers within the Empire who are interested in the study of the Common Law of England. The first book, which is the introduction, deals with certain general principles and classifications. The second, third and fourth books deal with the substantive law, *viz.*, Law of Crimes, Law of Torts and Law of Contracts, the three of the most important and difficult branches of the substantive law. The fifth book deals with the Adjective Law The sixth book deals with the Law of Persons and in that book the last two chapters are specially interesting. The last but one deals with the Legal Profession and this is bound to be of special interest to all lawyers within the Empire. The last chapter deals with the present condition of the Law of England. The author there observes :—" The laws of